

AMENDED IN SENATE JANUARY 6, 2014

AMENDED IN SENATE APRIL 1, 2013

**SENATE BILL**

**No. 797**

---

**Introduced by Senator Anderson**  
**(Coauthor: Senator Wyland)**

February 22, 2013

---

An act to amend Sections 17276.21 and 24416.21 of, and to add Sections 17207.1, 19057.5, 19306.5, and 24347.1 to, the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

SB 797, as amended, Anderson. Income taxation: net operating losses: fraudulent investment arrangement losses.

The Personal Income Tax Law and the Corporation Tax Law, in modified conformity with federal income tax laws, allow a deduction for losses sustained during the taxable year and not compensated for by insurance or otherwise. Those state laws conform to specified revenue rulings and revenue procedures of the Internal Revenue Service regarding treatment of losses due to investment arrangements discovered to be criminally fraudulent, except that, among other things, net operating loss carrybacks and carryforwards are not allowed.

This bill would provide a safe harbor for determining the year in which those losses attributable to criminal fraud occurred, as described in a specified revenue procedure of the Internal Revenue Service, and would allow a net operating loss carryover or carryback of any resulting deduction from the losses in conformity with federal income tax law.

This bill would make a legislative finding and declaration relating to the public purpose served by the bill.

This bill would take effect immediately as a tax levy.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 17207.1 is added to the Revenue and  
2     Taxation Code, to read:  
3     17207.1. (a) (1) For each taxable year beginning on or after  
4     January 1, 2008, if a taxpayer that is a qualified investor, as defined  
5     in the Internal Revenue Service's Revenue Procedure 2009-20,  
6     follows the procedures described in Section 6 of that Revenue  
7     Procedure for federal income tax purposes, and follows the same  
8     procedures for purposes of this part, the Franchise Tax Board shall  
9     not challenge the treatment described in paragraph (2) by the  
10    qualified investor with respect to the qualified loss.  
11    (2) The treatment described in this paragraph means all of the  
12    following:  
13    (A) The loss is deducted as a theft loss.  
14    (B) The taxable year in which the theft was discovered within  
15    the meaning of Section 165(e) of the Internal Revenue Code,  
16    *relating to theft loss*, is the discovery year described in Section  
17    4.04 of the Internal Revenue Service's Revenue Procedure 2009-20.  
18    (C) The amount of the deduction is the amount specified in  
19    Section 5.02 of the Internal Revenue Service's Revenue Procedure  
20    2009-20.  
21    (b) To the extent a deduction resulting from the application of  
22    this section results in a net operating loss, Section 172 of the  
23    Internal Revenue Code, as applicable for federal income tax  
24    purposes for a taxable year, shall be applicable for purposes of this  
25    section for the same taxable year, without regard to Section  
26    17276.20.  
27    SEC. 2. Section 17276.21 of the Revenue and Taxation Code  
28    is amended to read:  
29    17276.21. (a) Notwithstanding Sections 17276, 17276.1,  
30    17276.2, 17276.4, 17276.5, 17276.6, 17276.7, and 17276.20 of  
31    this code and Section 172 of the Internal Revenue Code, no net  
32    operating loss deduction shall be allowed for any taxable year  
33    beginning on or after January 1, 2008, and before January 1, 2012.  
34    (b) For any net operating loss or carryover of a net operating  
35    loss for which a deduction is denied by subdivision (a), the

1 carryover period under Section 172 of the Internal Revenue Code  
2 shall be extended as follows:

3 (1) By one year, for losses incurred in taxable years beginning  
4 on or after January 1, 2010, and before January 1, 2011.

5 (2) By two years, for losses incurred in taxable years beginning  
6 on or after January 1, 2009, and before January 1, 2010.

7 (3) By three years, for losses incurred in taxable years beginning  
8 on or after January 1, 2008, and before January 1, 2009.

9 (4) By four years, for losses incurred in taxable years beginning  
10 before January 1, 2008.

11 (c) Notwithstanding subdivision (a), a net operating loss  
12 deduction shall be allowed for carryback of a net operating loss  
13 attributable to a taxable year beginning on or after January 1, 2013.

14 (d) The provisions of this section shall not apply to the following  
15 taxpayers:

16 (1) For any taxable year beginning on or after January 1, 2008,  
17 and before January 1, 2010, this section shall not apply to a  
18 taxpayer with net business income of less than five hundred  
19 thousand dollars (\$500,000) for the taxable year. For purposes of  
20 this paragraph, business income means:

21 (A) Income from a trade or business, whether conducted by the  
22 taxpayer or by a passthrough entity owned directly or indirectly  
23 by the taxpayer. For purposes of this paragraph, the term  
24 “passthrough entity” means a partnership or an “S” corporation.

25 (B) Income from rental activity.

26 (C) Income attributable to a farming business.

27 (2) For any taxable year beginning on or after January 1, 2010,  
28 and before January 1, 2012, this section shall not apply to a  
29 taxpayer with modified adjusted gross income of less than three  
30 hundred thousand dollars (\$300,000) for the taxable year. For  
31 purposes of this paragraph, “modified adjusted gross income”  
32 means the amount described in paragraph (2) of subdivision (h)  
33 of Section 17024.5, determined without regard to the deduction  
34 allowed under Section 172 of the Internal Revenue Code, relating  
35 to net operating loss deduction.

36 (e) This section shall not apply to a loss resulting from the  
37 application of Section 17207.1.

38 SEC. 3. Section 19057.5 is added to the Revenue and Taxation  
39 Code, to read:

1 19057.5. Section 6501(h) of the Internal Revenue Code, relating  
2 ~~to limitations on credit or refund with respect to the special period~~  
3 ~~of limitation with respect to net operating loss or capital loss~~  
4 carrybacks, shall apply to a net operating loss resulting from the  
5 application of Section 17207.1 or Section 24347.1, except as  
6 otherwise provided.

7 SEC. 4. Section 19306.5 is added to the Revenue and Taxation  
8 Code, to read:

9 19306.5. Section 6511(d)(2) of the Internal Revenue Code,  
10 ~~relating to the limitations on credit or refund with respect to the~~  
11 ~~special period of limitation with respect to net operating loss or~~  
12 ~~capital loss carrybacks, shall apply to a net operating loss resulting~~  
13 ~~from the application of Section 17207.1 or Section 24347.1, except~~  
14 ~~as otherwise provided.~~

15 SEC. 5. Section 24347.1 is added to the Revenue and Taxation  
16 Code, to read:

17 24347.1. (a) (1) For each taxable year beginning on or after  
18 January 1, 2008, if a taxpayer that is a qualified investor, as defined  
19 in the Internal Revenue Service's Revenue Procedure 2009-20,  
20 follows the procedures described in Section 6 of that Revenue  
21 Procedure for federal income tax purposes, and follows the same  
22 procedures for purposes of this part, the Franchise Tax Board shall  
23 not challenge the treatment described in paragraph (2) by the  
24 qualified investor with respect to the qualified loss.

25 (2) The treatment described in this paragraph means all of the  
26 following:

27 (A) The loss is deducted as a theft loss.

28 (B) The taxable year in which the theft was discovered within  
29 the meaning of Section 165(e) of the Internal Revenue Code,  
30 *relating to theft loss*, is the discovery year described in Section  
31 4.04 of the Internal Revenue Service's Revenue Procedure 2009-20.

32 (C) The amount of the deduction is the amount specified in  
33 Section 5.02 of the Internal Revenue Service's Revenue Procedure  
34 2009-20.

35 (b) To the extent a deduction resulting from the application of  
36 this section results in a net operating loss, Section 172 of the  
37 Internal Revenue Code, *relating to net operating loss*, as applicable  
38 for federal income tax purposes for a taxable year, shall be  
39 applicable for purposes of this section for the same taxable year,  
40 without regard to Section 24416.20.

1 SEC. 6. Section 24416.21 of the Revenue and Taxation Code  
2 is amended to read:

3 24416.21. (a) Notwithstanding Sections 24416, 24416.1,  
4 24416.2, 24416.4, 24416.5, 24416.6, 24416.7, and 24416.20 of  
5 this code and Section 172 of the Internal Revenue Code, no net  
6 operating loss deduction shall be allowed for any taxable year  
7 beginning on or after January 1, 2008, and before January 1, 2012.

8 (b) For any net operating loss or carryover of a net operating  
9 loss for which a deduction is denied by subdivision (a), the  
10 carryover period under Section 172 of the Internal Revenue Code  
11 shall be extended as follows:

12 (1) By one year, for losses incurred in taxable years beginning  
13 on or after January 1, 2010, and before January 1, 2011.

14 (2) By two years, for losses incurred in taxable years beginning  
15 on or after January 1, 2009, and before January 1, 2010.

16 (3) By three years, for losses incurred in taxable years beginning  
17 on or after January 1, 2008, and before January 1, 2009.

18 (4) By four years, for losses incurred in taxable years beginning  
19 before January 1, 2008.

20 (c) Notwithstanding subdivision (a), a net operating loss  
21 deduction shall be allowed for carryback of a net operating loss  
22 attributable to a taxable year beginning on or after January 1, 2013.

23 (d) The disallowance of any net operating loss deduction for  
24 any taxable year beginning on or after January 1, 2008, and before  
25 January 1, 2010, pursuant to subdivision (a) shall not apply to a  
26 taxpayer with income subject to tax under this part of less than  
27 five hundred thousand dollars (\$500,000) for the taxable year.

28 (e) (1) The disallowance of any net operating loss deduction  
29 for any taxable year beginning on or after January 1, 2010, and  
30 before January 1, 2012, pursuant to subdivision (a) shall not apply  
31 to a taxpayer with preapportioned income of less than three hundred  
32 thousand dollars (\$300,000) for the taxable year.

33 (2) For purposes of this subdivision, “preapportioned income”  
34 means net income after state adjustments, before the application  
35 of the apportionment and allocation provisions of this part.

36 (3) For taxpayers that are required to be included in a combined  
37 report under Section 25101 or authorized to be included in a  
38 combined report under Section 25101.15, the amount prescribed  
39 in paragraph (1) shall apply to the aggregate amount of

1 preapportioned income for all members included in a combined  
2 report.

3 (f) Notwithstanding subdivision (a), this section shall not apply  
4 to a taxpayer that ceased to do business or has a final taxable year  
5 ending prior to August 28, 2008, that sold or transferred  
6 substantially all of its assets resulting in a gain on sale during a  
7 taxable year ending prior to August 28, 2008, for which the gain  
8 could be offset with existing net operating loss deductions and the  
9 sale or transfer occurred pursuant to a plan of reorganization under  
10 Chapter 11 of Title 11 of the United States Code. An amended tax  
11 return claiming net operating loss deductions allowed pursuant to  
12 this subdivision shall be treated as a timely filed original return.

13 (g) The Legislature finds and declares that the addition of  
14 subdivision (f) to this section by the act adding this subdivision  
15 fulfills a statewide public purpose by providing necessary tax relief  
16 for a taxpayer that ceased to do business or has a final taxable year  
17 ending prior to August 28, 2008, that sold or transferred  
18 substantially all of its assets resulting in a gain or sale during a  
19 taxable year prior to August 28, 2008, for which the gain could be  
20 offset with existing net operating loss deductions and the sale or  
21 transfer occurred pursuant to a plan of reorganization under Chapter  
22 11 of Title 11 of the United States Code, in order to ensure that  
23 these taxpayers are not permanently denied the net operating loss  
24 deduction.

25 (h) This section shall not apply to a loss resulting from the  
26 application of Section 24347.1.

27 SEC. 7. The Legislature finds and declares that this act fulfills  
28 a statewide public purpose by providing tax relief for taxpayers  
29 who are innocent victims of fraudulent investment schemes.

30 SEC. 8. This act provides for a tax levy within the meaning  
31 of Article IV of the Constitution and shall go into immediate effect.